

REMARKS

STATUS OF THE CLAIMS.

Claims 19-23 and 26-30 are pending with entry of this amendment. Claims 1-18, 24, and 25 are cancelled without prejudice. Claims 21, 27, and 30 are amended herein to even more clearly recite the invention. These amendments introduce no new matter.

RESTRICTION/ELECTION.

Applicants confirm the previous election without traverse of Claim Group V (claims 19-23) in response to a restriction requirement. Applicants further confirm the previous election of the antibody 6E10 in response to an election of species requirement. Claims 19-23 and 26-28 relate to antibodies including antibody 6E10 and therefore read on the elected species. Claims 29 and 30 relate to hybridomas or cell cultures including those that produce antibody 6E10 (ATCC accession number CRL 10514 produces 6E10). Accordingly, Applicants submit that these claims should also be examined in the application even though they read on hybridomas or cell cultures, rather than antibodies.

Applicants note that the independent claims in the present application are Markush claims, which are a specific form of generic claim. Restriction/election practice relating to Markush claims is governed by M.P.E.P § 803.02, which states:

This subsection deals with Markush-type generic claims which include a plurality of alternatively usable substances or members. In most cases, a recitation by enumeration is used because there is no appropriate or true generic language. A Markush-type claim can include independent and distinct inventions. This is true where two or more of the members are so unrelated and diverse that a prior art reference anticipating the claim with respect to one of the members would not render the claim obvious under 35 U.S.C. 103 with respect to the other member(s). In applications containing claims of that nature, *the examiner may require a provisional election of a single species prior to examination on the merits. The provisional election will be given effect in the event that the Markush-type claim should be found not allowable. Following election, the Markush-type claim will be examined fully with respect to the elected species and further to the extent necessary to determine patentability.* If the Markush-type claim is not allowable over the prior art, examination will be

limited to the Markush-type claim and claims to the elected species, with claims drawn to species patentably distinct from the elected species held withdrawn from further consideration.

As an example, in the case of an application with a Markush-type claim drawn to the compound C-R, wherein R is a radical selected from the group consisting of A, B, C, D, and E, the examiner may require a provisional election of a single species, CA, CB, CC, CD, or CE. The Markush-type claim would then be examined fully with respect to the elected species and any species considered to be clearly unpatentable over the elected species. If on examination the elected species is found to be anticipated or rendered obvious by prior art, the Markush-type claim and claims to the elected species shall be rejected, and claims to the non-elected species would be held withdrawn from further consideration. As in the prevailing practice, a second action on the rejected claims would be made final.

On the other hand, should no prior art be found that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended. If prior art is then found that anticipates or renders obvious the Markush-type claim with respect to a nonelected species, the Markush-type claim shall be rejected and claims to the nonelected species held withdrawn from further consideration. The prior art search, however, will not be extended unnecessarily to cover all nonelected species. Should applicant, in response to this rejection of the Markush-type claim, overcome the rejection, as by amending the Markush-type claim to exclude the species anticipated or rendered obvious by the prior art, the amended Markush-type claim will be reexamined. The prior art search will be extended to the extent necessary to determine patentability of the Markush-type claim. In the event prior art is found during the reexamination that anticipates or renders obvious the amended Markush-type claim, the claim will be rejected and the action made final. Amendments submitted after the final rejection further restricting the scope of the claim may be denied entry. (Emphasis added.)

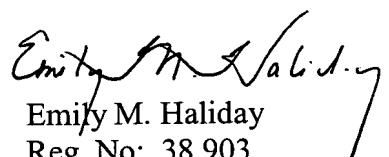
Examination of the pending claims in accordance with M.P.E.P § 803.02 is respectfully requested.

Please note, however, that Applicants reserve the right to file subsequent applications claiming the canceled subject matter, and the claim cancellations should not be construed as abandonment or agreement with the Examiner's position in the Office Action.

If a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (510) 769-3509.

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Respectfully submitted,


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